

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT ELLIS,

No. C 13-1985 CW (PR)

Petitioner,

ORDER DENYING MOTION TO
SET ASIDE PETITION TO
GET AUTHORIZATION FROM
NINTH CIRCUIT

v.

M. FOULK, Warden,

Docket no. 7

Respondent.

_____/

Petitioner, a state prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his 1998 conviction for murder and attempted murder. On May 9, 2013, the Court dismissed the petition and entered judgment because this was a second or successive petition containing previously raised or new claims. See Doc. no. 4, Order of Dismissal. In its Order of Dismissal, the Court noted that, pursuant to 28 U.S.C. § 2244(b)(3)(A), Petitioner could not file a successive petition in this Court without first obtaining from the United States Court of Appeals an order authorizing this Court to consider it.

Now Petitioner files a document entitled, "Ex parte to Set Aside Petition to Get Authorization from Court of Appeals to Consider Petitioner's Complaint on the Constitutional Claims." In this motion Petitioner states he "was given notice by this Court to seek authorization from the district court to proceed with the unexhausted claims argued. The Petitioner inadvertently sought relief from the Ninth Circuit on a second and successive petition."

1 It is not clear exactly what Petitioner is requesting in this
2 motion. If he is seeking authorization from this Court to file a
3 motion in the Ninth Circuit, that request is denied because
4 Petitioner may file a motion in the Ninth Circuit without
5 authorization from this Court. If Petitioner is again requesting
6 that this Court rule on his habeas claims, that request is denied
7 because, as the Court has stated previously, it cannot consider
8 Petitioner's successive petition without authorization from the
9 Ninth Circuit.

10 Accordingly, Petitioner's "motion to set aside petition" is
11 denied. This Order terminates Docket no. 7.

12 IT IS SO ORDERED.

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14 Dated: 5/27/2014

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16 CLAUDIA WILKEN
17 United States District Judge
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